

UK PRODUCT RECALL CODE OF PRACTICE LAUNCHED

7 March 2018 saw the long-awaited public launch of the UK Government's new **Code of practice on consumer product safety related recalls and other corrective actions** (the "Code"). A copy of the Code can be obtained [here](#) and a link to the BEIS press release is [here](#).

Preparation of the Code was one of the recommendations of the UK Government's Working Group on Product Recalls and Safety (see further our alert [here](#)), was sponsored by the Department of Business Energy and Industrial Strategy ("BEIS") and was facilitated by the British Standards Institute ("BSI"). Baker McKenzie partners John Leadley and Kate Corby, supported by Senior Associate Jo Redmond, participated in the drafting committee and summarise below the key messages of the Code.

Please let us know if you would like to discuss any aspects of the Code in more detail.

COVERAGE AND SCOPE

The Code is informed by behavioural insights research and sets out best practice guidance for both businesses (in Part One) and regulators (in Part Two) alike concerning effective monitoring, assessment, notification and correction (including recall if needed) of product safety issues. The Code applies to all sectors that are not otherwise covered by alternative sector-specific national guidance (such as food, medicines, medical devices and vehicles). It is intended for use by all business sizes, from small companies right up to large multi-nationals, and for both B2C and B2B entities.

The Code assumes that businesses placing products on the market have already addressed their responsibility to supply only safe products and guidance on this requirement is therefore not included. However, Annex A to the Code, contains a summary of important aspects of the regulatory context and potential strict liability for defective products.

The Code provides guidance on:

01

What to do before there is a product safety issue and how to be best prepared.

02

What to do when something goes wrong, such that a product becomes, or may become, unsafe.

ADVANCE PLANNING

The advice for businesses focuses first on planning: how can a business best prepare itself to react to a situation where one of its products is or becomes unsafe?

Detailed consideration is given to what information should be included in a product safety incident plan ("PSIP"), how that should be communicated throughout the business and who is accountable for it. Key topics for businesses to consider when preparing a PSIP (or evaluating an existing one), include:

- a. understanding where all component parts come from and ensuring that traceability records up and down the supply chain are clear and up to date; and
- b. having in place detailed plans to cover:
 - i. monitoring to enable the swift identification of product safety-related trends;
 - ii. risk assessment and root cause analysis processes;
 - iii. legal notification requirements;
 - iv. internal and external communications; and
 - v. corrective action decision-making.

Having a thorough, up to date and widely understood PSIP will assist a business with responding quickly to a product safety issue and, assuming the PSIP is implemented correctly, that reflex will directly benefit consumers by ensuring that the risk of harm to them is understood and appropriate measures taken promptly to address that risk.

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MANAGING A CORRECTIVE ACTION

The primary concern of any business when reacting to a (potential) safety issue must be addressing the risk of harm to consumers. The Code provides useful guidance on how to do so by implementing a corrective action plan, which will of course need to be tailored to effectively deal with the particular facts and challenges of each safety issue.

For example, the Code provides guidance on developing an effective communications plan, as well as a suggested contacts list. Successful communication with consumers is a fundamental component of an effective corrective action plan, and the lengthy guidance in the Code reflects this. The Code also sets out the fundamentals of a legal notification plan and encourages businesses to make sure that relevant regulators are brought into the picture at an appropriate and early stage.

Taking all of these elements together, the Code includes a helpful flow-chart of a "typical corrective action sequence" and provides guidance on what corrective action might be appropriate in a given scenario. The Code also provides guidance on how to conclude your corrective action and a framework for considering what lessons can be learned from an incident to further improve future reaction to a safety issue.

COMMENT

Provision of government endorsed practical and granular guidance of this nature which sets out the Government's expectations of businesses and regulators should only be viewed as a positive step forward. We understand that BEIS intends the Code essentially to be seen as mandatory, and will be expecting businesses in sectors covered by the Code to follow it. The Code also provides useful insight into what guidance regulators will be expected to follow in this context.



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ADVICE TO REGULATORS

Part Two of the Code covers best practice on how regulators can:

- a. effectively monitor incidents and analyse the associated data;
- b. support businesses in: (i) the preparation of their PSIP, (ii) monitoring of incidents and (iii) implementing appropriate corrective action; and
- c. respond proportionately if a business fails to take proper action in response to a safety issue.

The Code also describes the regulatory framework, setting out the roles and responsibilities of the relevant entities that have a regulatory responsibility for consumer product safety. It then lists considerations applicable to how market surveillance authorities can ensure their staff are equipped to perform the role required of them and what data feeds in to the decisions they will have to make in the course of their duties.

Annex C of the Code sets out a checklist for assessing a PSIP, which we expect regulators may use as a framework for discussions with businesses about the Code.